


Subject: Management

Production of Courseware

 - Content for Post Graduate Courses



Paper: 12, Business Environment

Module 33, Foreign exchange management Act



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Items	Description of Module
Subject Name	Management
Paper Name	Business Environment
Module Title	Foreign Exchange Management Act
Module Id	Module no.- 33
Pre- Requisites	Basic knowledge of what business environment is
Objectives	To study what Foreign Exchange Management Act is
Keywords	FERA, FEMA,

QUADRANT-I

Module 33: Foreign Exchange Management Act
1. Learning Outcome
2. Introduction
3. FEMA
4. Objectives of FEMA
5. Provisions /Rules / Regulations of FEMA
6. Main Features of FEMA
7. Summary

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Learning Outcome:

After completing this module the students will be able to:

- Understand what is FEMA
- Understand the objectives of FEMA.
- Learn various definitions given under the FEMA
- Learn various provisions of FEMA.

2. Introduction

When countries do Bilateral Trade with each other they require money flow for payments. Almost all of the international financial transactions involve exchange of one currency with another. The ratio in which they are exchanged are called as exchange rates. Foreign exchange markets provide a mechanism which helps to exchange different monetary units for each other. Simply stating Foreign exchange markets are those markets where foreign exchange transactions take place. Here the national currencies are bought and sold against one another. The Foreign exchange transactions were earlier regulated in India by Foreign Exchange Regulations Act (FERA 1973). This Act helped to regulate many aspects of the conduct of business outside the country by Indian Companies and in India by foreign countries. FERA was described as “Draconian” and “Obnoxious” law. The main aim of FERA was the conservation and effective utilisation of foreign exchange resources the country. When FERA was passed country was facing severe foreign exchange crises and it was a highly controlled regime. As we gradually grew towards achieving the objectives of liberalized economy FERA proved to be an obsolete and obnoxious Act. Some of the amendments were made in 1993 to achieve the objectives of liberalisation. But there was a huge demand to modify FERA substantially in the light of economic

liberalisation and improving the foreign exchange position of the country. Therefore, accordingly a new act replaced FERA and was known as FEMA.

3. FEMA

FEMA stands for Foreign exchange management Act 2000. FEMA is a very important and useful Act applicable in India which regulates and control the foreign exchange of the country. This Act was passed in 1999 and came into effect from June 1, 2000 to whole of the country. FEMA replaced the earlier prevalent Act i.e FERA, Foreign Exchange Regulation Act. FEMA was most suitable for India corporate sector instead of FERA because almost all strict regulations of FERA were removed in FEMA.

According to the official notification of FEMA 1999

“It is an Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India”

It extends to the whole of India. It also applies to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies. Contravention is the breach of provisions and norms under the Foreign Exchange Management Act, or FEMA 1999. Compounding of contraventions refers to the process where the individual or the corporate entity can admit the contravention and seek redress from the Reserve Bank, restricted to a specific sum

4. Objectives of FEMA

1. Main objective of FEMA is to facilitate foreign trade as well as payments.
2. Another objective of FEMA is to promote, foster and encourage orderly development and maintenance of foreign exchange market

Definitions of some important terms as given in FEMA 1999

In this Act, unless the context otherwise requires,-

- (a) "**Adjudicating Authority**" means an officer authorized under sub-section (1) of section 16
- (b) "**Appellate Tribunal**" means the Appellate Tribunal for Foreign Exchange established under section 18;
- (c) "**authorized person**" means an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;

(d) "**Bench**" means a Bench of the Appellate Tribunal;

(e) "**capital account transaction**" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and it also includes transactions referred to in sub-section (3) of section 6;

(f) "**Chairperson**" means the Chairperson of the Appellate Tribunal;

(g) "**currency**" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(h) "**currency notes**" means and includes cash in the form of coins and bank notes;

(i) "**current account transaction**" means a transaction other than a capital account transaction. Such transaction includes the following:

(i) payments which are due in connection with foreign trade, other current business, services, and short term banking and credit facilities in the ordinary course of business,

(ii) payments which are due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(j) "**Foreign currency**" means any currency other than Indian currency;

(k) "**Foreign exchange**" means foreign currency and includes,-

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

(l) "**foreign security**" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(m) "**person**" includes-

(i) an individual,

(ii) a Hindu undivided family,

- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by such person;

(n) "**repatriate to India**" means bringing into India the realized foreign exchange and-

- (i) the selling of such foreign exchange to an authorized person in India in exchange for rupees, or
- (ii) the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank, and includes use of the realized amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

(o) "**Transfer**" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

5. Provisions /Rules / Regulations of FEMA

1. Dealing in foreign exchange, etc.-

Section 3 of FEMA act has imposed so many restrictions and limitations on the dealings of foreign exchange. (a) No one can deal in or transfer any foreign exchange or foreign security to any person who is not an authorized person;

(b) No person can make any payment to person resident outside India. He cannot even transfer for the credit of any person resident outside India in any manner except with the permission of RBI.

(c) Any person in India can receive any foreign exchange only through authorised person permitted by RBI. Any payment by order or on behalf of any person resident outside India in any manner can be done with the permission of RBI.

(d) No person can enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person except with the permission of RBI.

2. Holding of foreign exchange, etc Except otherwise provided in this Act no person who is resident of India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

3. Current account transactions.-

FEMA permits sale or drawing of foreign exchange from any authorised person only if it is related with current account transactions. But however Central government reserves right to impose any restrictions on such current account transactions in consultation with RBI keeping in view the public interest.

4. Capital account transactions:

According to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.

However The Reserve Bank may, in consultation with the Central Government, specify, restrict or declare -

- (a) Any class or classes of capital account transactions which are permissible;
- (b) RBI can also notify timely the limit up to which foreign exchange shall be admissible for such transactions. The Act states that the Reserve Bank shall not impose any restriction on the drawl of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary courts of business.

The Reserve Bank may also by regulations, prohibit, restrict or regulate the following-

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in rupees in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred-
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.

A person who is resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. That means the origin of such foreign currency was outside India when he was resident outside India or it was inherited from a person resident outside India.

In the same manner , A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

5. Export of goods and services.- This Act states that every exporter of goods shall have to furnish to the Reserve Bank or to such other authority a declaration in such form or in the prescribed manner true and correct material particulars of the export of goods and services. It should furnish the details, including the amount representing the full export value. If at the time of export the full value of the goods is not ascertainable then the value which the goods expect to receive at the time of sale according to the prevailing market conditions should be furnished to the competent authority or RBI. The exporter may have to furnish to the Reserve Bank all such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter timely.

The Reserve Bank may if deems fit instruct any exporter to comply with requirements of furnishing all the details pertaining to the value of goods according to prevailing market conditions without any delay.

Every exporter of services shall have to furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

The provisions regarding export of goods and services are covered under section 7.

Every exporter of the goods will have to furnish to Reserve bank of India or any other competitive authority a declaration in any such manner which has been prescribed. For the purpose of ensuring the realisation of export proceeds by any such exporters will have to furnish RBI all such information which has been required by the competent authority to prescribed. Moreover every exporter of the services shall have to furnish to RBI or the other competitive authorities a declaration in such form and in the manner prescribed.

The reserve bank for the purpose of securing compliance with the provisions of this act and of an regulations, rules , notifications or directions made there under give to the authorised persons any directions in regard to making of payment or doing or stopping from doing any act relating to the foreign exchange or security.

6. Realization and repatriation of foreign exchange. - Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank

9. Exemption from realization and repatriation in certain cases. - Under certain cases this Act provides exemption from realisation and repatriation which are listed below-

(a) Any person can possess foreign currency or foreign up to such limit as the Reserve Bank may specify.

(b) If RBI specifies and permits any such person or class of persons then they can hold or operate foreign currency account up to the limit prescribed.

(c) Foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person can be held only in pursuance of a general or special permission granted by the Reserve Bank.

(d) If any foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from it can be held up to the limit specified by RBI

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means can be held upto the limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

6. Main Features of FEMA

- FEMA replaced the Foreign Exchange Regulations Act (FERA) 1973, which regulated the foreign exchange transactions in India.
- FEMA applies to whole of India and also applies to all branches, offices, and agencies outside India, owned or controlled by a person resident in India.
- The main objective of FEMA is to facilitate external trade and payments and to promote the orderly development and maintenance of foreign exchange market.
- RBI vests the power to administer this Act.
- The FEMA empowers the Central Government to impose restrictions on dealings in foreign exchange and foreign security and payments to and receipts from any person outside India.
- The Act imposes restrictions on persons resident in India on acquiring, holding or owning foreign exchange, foreign security and immovable property abroad and on transfer of foreign exchange or security abroad.

7 Summary

This Act is more transparent than FERA. Most of the provisions relating to dealing of foreign exchange require specific permissions of RBI on acquisition and holding of foreign exchange.

This Act classifies the foreign exchange transactions in two categories, viz. capital account and current account transactions. It provides power to RBI that in consultation with central government the classes of various transactions and limits of such transactions can be fixed.

This act is a civil law and the contraventions of the Act provide for civil consequences except in certain cases. FEMA does not apply to Indian citizen's resident outside India. Although selling or drawing of foreign exchange is done through an authorized person, the RBI is empowered by this Act to subject the capital account transactions to a number of restrictions. FERA was an old enactment which was repealed and a new enactment named FEMA 1999 was passed. It is a small enactment with 49 sections and very liberal as compared to FERA.

Section 5 of the FEMA Act states that otherwise provide in this Act. No person who is resident of India can acquire or hold, own, possess or transfer any of the foreign exchange, foreign security or any immovable property which is situated outside India.

The Reserve Bank may at any time cause an inspection to be made by any officer of the RBI specially authorised in this behalf for the purpose of verifying the correctness of the statement, information or particulars furnished to RBI. For the purpose of carrying an inspection to be made by any officer of the business of any authorised person for securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made there under.